Due service and receipt of a copy of the within is hereby admitted

this _____ *day of September, 1929.*

_____

Attorney General of the State of California,

_____

Deputy Attorney General of the State of California,
Solicitors for Appellees.

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CHARLES ELMORE C

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1929

No. 267

GEO. T. COTTINGHAM and WILLIAM C. MEGINNIS, doing business as City Transfer Company, et al.,

Appellants,

vs.

FRANK G. SNOOK, as Chief of the Division of Motor Vehicles, State of California, et al.,

Appellees.

STATEMENT.

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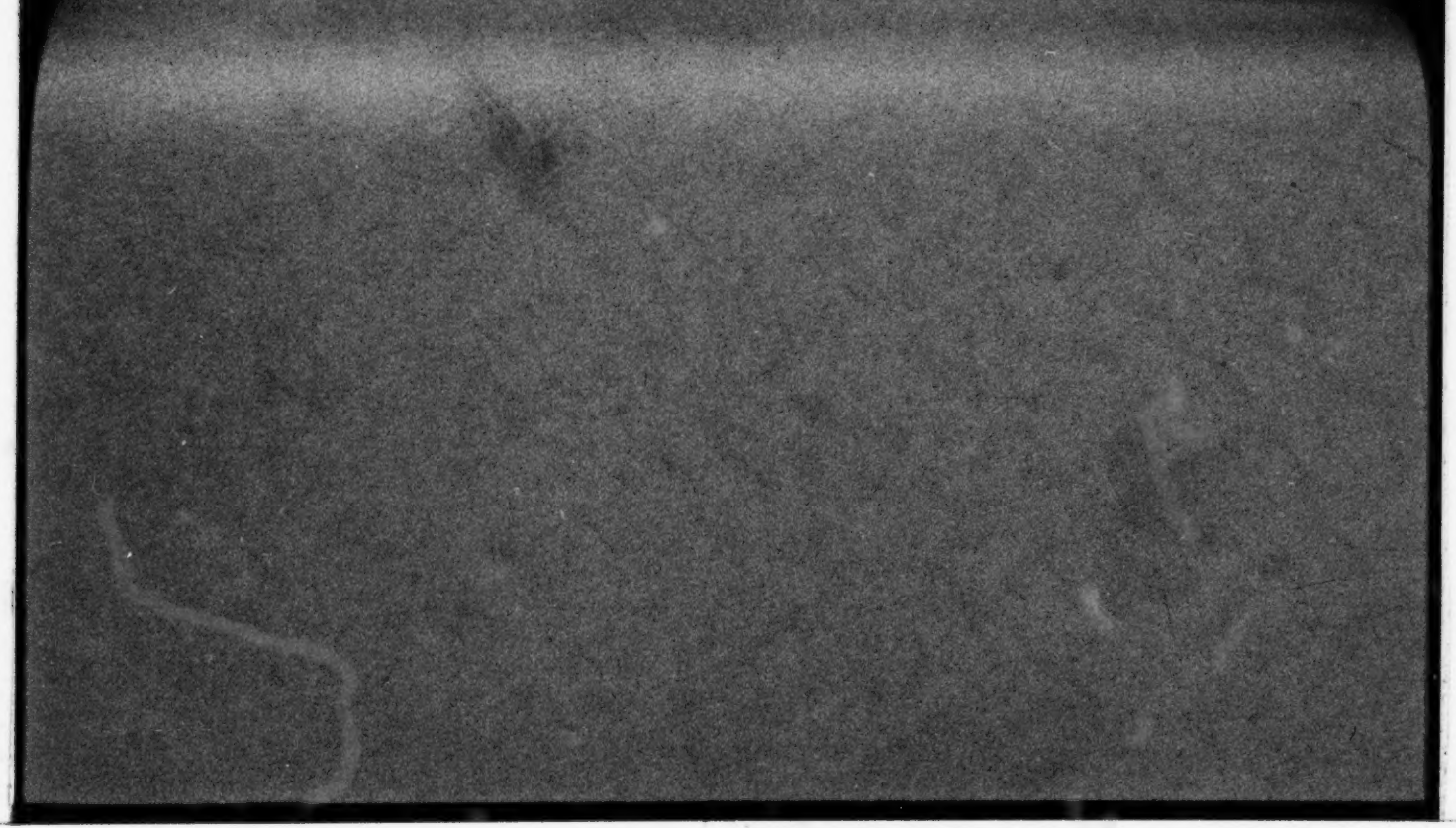

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STATEMENT.

Come now the appellants in the above entitled cause and file their statement required by Rule 12 of the Supreme Court.

(a) The appeal herein is based upon the provisions of Paragraph 3 of Section 238 of the Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. at L. 936, Chap. 229, U. S. C. title 28, Section 345.

(b) On June 26, 1929, the Statutory Court entered an order and decree denying the motion for an interlocutory injunction, granting the motion to dismiss the bill of complaint filed by the defendants, and also dismissing the cause of action. (Record, pp. 26, 27.) On July 1, 1929, the appellants filed and presented their prayer for appeal to said Statutory Court. (Record, p. 28.)

(c) Plaintiffs (now appellants) instituted this action in the United States District Court, Northern District of California. (Record, p. 1.) Plaintiffs have been and will in the future be compelled to pay the exactions under the subdivision (c) of Section 77, as amended, of the "Vehicle Act" of California, to the defendant Snook, in order to use, not only the highways outside of the limits of cities, but also the streets within said cities, with their motor vehicles in their respective businesses. Plaintiffs must put in service additional motor vehicles after July 1, 1929, in order to take care of their businesses or their businesses will be irreparably damaged or destroyed. (Record, pp. 1, 2, 3.) Defendant Snook (now appellee) is the Chief of the Division of Motor Vehicles, a State Officer, and defendant Riley (now appellee) is the State Controller, a State Officer. (Record, p. 3.)

State of California enacted the California Vehicle Act in 1923 and in 1927 amended said Act, especially subdivision (c) of Section 77 of said Act. Every owner or operator of a motor vehicle, trailer or semi-trailer must pay the exaction under subdivision (c) of said section before they can use said vehicles on

any public highway. The defendant Snook is not permitted to issue any registration on any said motor vehicles unless said owner has paid all of the charges in subdivisions (a) (b) and (c); it shall be unlawful for any motor vehicle to use any highway until all said exactions as aforesaid have been paid or the owner will be arrested and subject to fines or imprisonment or both, and also for the seizure of said motor vehicles. (Record, pp. 4, 5.) The legislative bodies of counties and cities are given the power to license all motor vehicles as aforesaid for revenue, as well as the cost of regulation. (Record, p. 5.) The defendant Snook must deposit daily the moneys, so collected from said Section 77, as aforesaid, into the State treasury to the credit of the motor vehicle fund. All amounts so collected and distributed must be expended exclusively in the construction and maintenance of public highways, outside of the limits of cities. (Record, pp. 5, 6.) The defendant Riley, as State Controller, is vested with the exclusive power to draw warrants upon said motor vehicle fund in the months of February and August. (Record, p. 6.) Prior to the said amendment of 1927, which went into force and effect in December, 1928, every motor vehicle was compelled to pay the charges named in the said subdivision (c), and the smallest charge was $10.00 for a vehicle weighing, unladen, less than 3000 pounds. The amendment has released any payments on vehicles weighing less than 3000 pounds no matter what the weight may be of load and vehicle. Under the said amendment the charges under subdivision

(c), as aforesaid, have been increased 250 per cent. There are many thousands of motor vehicles weighing less than 3000 pounds, unladen, but weigh more than 6000 pounds when laden transporting persons for hire and transporting property, and said owners of said vehicles pay no charges under said subdivision (c), as aforesaid, and said owners are in direct competition with the plaintiffs and all others similarly interested or situated, who must pay such exactions before they can use their motor vehicles not only on the streets of the cities, but also on the public highways outside of the said cities. The said defendant Snook has and will enforce said law. The plaintiffs and said others have been compelled to pay such charges as aforesaid. Said plaintiffs and said others have been damaged by said competition, as aforesaid, and are being damaged daily, and can never recover any of said losses from said owners who have been granted said privileges and immunities under the said provisions of said subdivision (c), as aforesaid. The plaintiffs allege that said subdivision (c), as aforesaid, and the acts of the defendant Snook, as Chief of the Division of Motor Vehicles, in enforcing said illegal subdivision (c), as aforesaid, are unconstitutional and void, being contrary to and in violation of the Fourteenth Amendment of the Federal Constitution, as well as the provisions of the Constitution of the State of California, prohibiting the making or enforcement of any law which shall abridge the privilege or immunities of citizens, or which shall deprive any person of life, liberty or property without due

process of law, or denies to any person the equal protection of the law, or granting privileges or immunities to some of the same class of persons while denying the same privileges or immunities to others of the same class, and the protection of all of which the plaintiffs and all said others pray. (Record, pp. 6, 7.)

The plaintiffs, as well as said others, are tax payers and are compelled to pay taxes and assessments in their respective cities to construct and repair the streets thereof, and the licenses for the use of motor vehicles on said streets transporting persons for hire or transporting property before they can use said streets. Said cities are empowered by the Constitution to regulate said streets and obtain revenue for such use as aforesaid. Said plaintiffs and all said others are required to pay said licenses before they can use their motor vehicles on said streets, and without such payments their businesses will be irreparably damaged and destroyed. Seventy-five per cent of the money collected is used for the reconstruction or repair of said streets, and the other 25 per cent is used for regulation. That 75 per cent of the operation of the plaintiffs and all said others is confined exclusively to the use of said streets and 25 per cent is on the highways outside of the limits of said cities. The monies collected under subdivision (c), as aforesaid, are expended exclusively in the reconstruction, maintenance and repair on State highways, or in the construction or maintenance of county roads, and no portion thereof is expended on the streets of said

cities. The plaintiffs allege that said charges under said subdivision (c), as aforesaid, are not designed as the measure of the cost or value of the use of highways outside of the limits of said cities, as said charges are the same no matter whether or not the motor vehicle operates continually on said highways. The said provisions of said subdivision (c), as aforesaid, and the acts of the said defendant Snook in enforcing said illegal charges are unconstitutional, being contrary to and in violation of the Fourteenth Amendment of the Federal Constitution, as well as the Constitution of the State of California, prohibiting the making or enforcement of any law which allowed double taxation, or granting privileges and immunities to some in the same class, or deprives any person of life, liberty or property without due process of law, or denies to any person the equal protection of the laws, all of which the said plaintiffs and said others pray for said protection. (Record, pp. 8, 9.)

Said defendant Snook, acting solely and by virtue of his said color of office, to-wit, Chief of the Division of Motor Vehicles, has enforced the said charges of said subdivision (c), as aforesaid, and has illegally demanded and collected the said charges against said plaintiffs and said all others; and said plaintiffs and all said others have been compelled to pay said exactions in order to use their motor vehicles, as aforesaid, or escape the heavy penalties imposed by fines or imprisonments or both, as well as the seizure of their motor vehicles. Said defendant Snook has already collected more than $2,500,000 from said subdivision

(c) at the time of the filing of this complaint; and that said defendant will collect more than $2,000,000 additional from said plaintiffs and said others during the remainder of the year 1929. No portion of said money collected under subdivision (c) will be used for the cost of regulation. That said exactions under said subdivision (c), as aforesaid, are compensation for the use of highways outside of the limits of cities, to-wit, "tolls," and are not based upon police power but for revenue. Said exactions are flat charges to be paid in advance before the use of the highways and said streets and are unconstitutional, as such charges cannot be divided. Said provisions of said subdivision (c), as aforesaid, and the acts of said defendant Snook in enforcing said illegal subdivision (c) are unconstitutional and void, being contrary to and in violation of the Fourteenth Amendment of the Federal Constitution, as well as the Constitution of the State of California, prohibiting the making or enforcement of any law which shall abridge the privileges or immunities of citizens or deprive any person of life, liberty or property without due process of law, and denies to any person the equal protection of the laws, the protection of all of which the plaintiffs and all said others pray. (Record, pp. 9, 10, 11.)

Congress enacted the Rural Post Act of 1916, and amended and supplemented the same by the "Federal Highway Act" of 1921. The State of California assented to the provisions of said Federal Acts and agreed to abide with the same. The Federal Government has performed all the acts required by it. All

State highways and all county roads have been constructed or reconstructed under the said Federal Acts, and said Federal aid has been expended for said purpose. That all the exactions under said subdivision (c), as aforesaid, are "tolls," and said charges are made for the use of said highways outside of the limits of cities, and no portion, so collected, is used for the cost of regulation or enforcement of said "California Vehicle Act," and no portion is expended on the construction, reconstruction, maintenance or repair of streets in said cities, as the plaintiffs and said others are taxed by said cities for such purposes by taxation, assessments and license fees.

That the provisions of said subdivision (c) and the acts of said defendant Snook in enforcing said illegal exactions are unconstitutional and void, being contrary to and in violation of the provisions of said Federal aid legislation prohibiting "tolls of all kinds," so adopted by the State, the protection of all of which the plaintiffs and all of said others pray. (Record, pp. 11, 12, 13.)

The said defendant Snook must pay the money so collected from said subdivision (c) to the State Treasurer, and no portion of the same can be withdrawn, unless said defendant Riley issue warrants on said fund, and he can only issue warrants in February and August. All of the said money so collected by said defendant Snook under the said subdivision (c), as amended, as aforesaid, is still in said "Motor Vehicle Fund." Unless restrained said defendant Riley will issue warrants in August, 1929, on said fund, and

such money will be distributed, and if the said exactions under said subdivision (c) and the acts of said defendant Snook will be declared unconstitutional and void, then such money will be lost to these plaintiffs and said others, and they will be irreparably damaged. (Record, p. 13.)

Plaintiffs and said others have no plain, adequate or complete remedy at law, and matters involved herein exceed in value the sum of $3000 exclusive of interest and costs. (Record, p. 14.)

The plaintiffs on behalf of themselves, as well as on behalf of all persons, firms, associations and corporations similarly interested or situated pray that an interlocutory injunction be granted restraining and enjoining the defendant Snook, as Chief of the Motor Vehicle Division, in any way or manner from enforcing or threatening to enforce the said provisions of said subdivision (c), as aforesaid, and further restraining and enjoining said defendant, Ray L. Riley, as State Controller, from issuing any warrant or warrants against said "Motor Vehicle Fund" which would deplete that fund to such an extent that less than $2,500,000 remain therein, which latter sum shall be subject to any order or orders of the Court; further, the Court shall proceed to call in two other judges, one of whom to be a circuit judge, for the purpose of hearing and determining the application of said interlocutory injunction as prayed under the provisions of Section 266, as amended, of the Judicial Code, and upon the final hearing before said Statutory Court for a decree declaring the said subdivision

(c), as aforesaid, is unconstitutional and the said defendant Snook be forever enjoined and permanently restrained from enforcing said illegal, void and unconstitutional subdivision (c), and for an accounting of the monies so collected from said illegal subdivision (c), as aforesaid, and said defendant Riley is commanded and directed to immediately issue a warrant for said amount, including interest, on said vehicle fund, and said money shall be paid in the registry of this Court, and in the event said amount so found is more in said "Motor Vehicle Fund," then a judgment for the said difference is to be entered against said defendant Snook, with interest, and for allowances, distributions and payments as the Court may hereafter determine, award and decree, and for all other proper relief, and for the costs and disbursements expended. (Record, pp. 14, 15, 16.)

Motion was presented for a hearing on the interlocutory injunction before a Statutory Court. (Record, pp. 17, 18.) Order was entered by the Court and a hearing was ordered before a Statutory Court. (Record, pp. 19, 20.) A proper notice was served upon the Governor, Attorney General and the two defendants. (Record, pp. 21, 22.) The defendants filed a motion to dismiss the bill of complaint. (Record, pp. 23, 24, 25.) The Statutory Court entered an order and decree refusing the motion for an interlocutory injunction, granting the motion to dismiss the bill of complaint and also dismissing the cause. (Record, pp. 26, 27.)

The plaintiffs filed and presented their assignments of error and prayer for appeal. The Statutory Court granted the prayer. (Record, pp. 28, 29, 30.) A proper appeal bond was filed. (Record, pp. 31, 32, 33.) A proper praecipe was served and filed. (Record, pp. 34, 35.) A proper citation was served and filed. (Record, pp. 37, 38.)

(d) The following cases sustained the jurisdiction:
Buck v. Kuykendall, 267 U. S. 308;
Morris, et al., v. Duby, et al., 274 U. S. 135.

Wherefore the appellants pray this Honorable Court to sustain its jurisdiction.

Dated, San Francisco,
August 19, 1929.

Respectfully submitted,
W. R. CRAWFORD,
J. F. VIZZARD,
HENRY G. HOTCHKISS,
Solicitors for Appellants.